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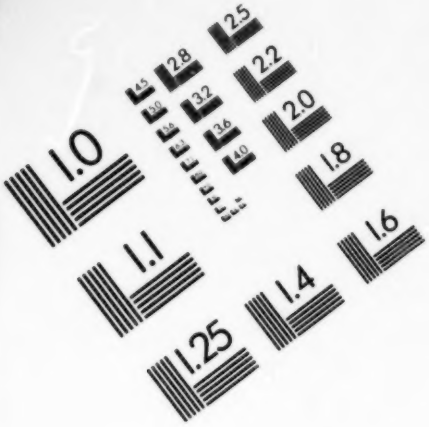

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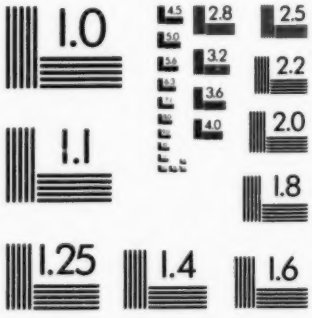

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PM-3 8½"x11" PHOTOGRAPHIC GENERAL TARGET
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United Nations CCPR/C/113/D/2218/2012

International Covenant on Civil and Political Rights

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Human Rights Committee

Communication No. 2218/2012

Views adopted by the Committee at its 113th session (16 March–2 April 2015)

Submitted by:	Zafar Abdullayev (represented by counsel)
Alleged victim:	The author
State party:	Turkmenistan
Date of communication:	3 September 2012 (initial submission)
Document references:	Special Rapporteur's rule 97 decision, transmitted to the State party on 5 December 2012 (not issued in document form)
Date of adoption of Views:	25 March 2015
Subject matter:	Conscientious objection to compulsory military service; inhuman and degrading treatment; conviction for the same offence twice.
Procedural issues:	Lack of substantiation of claims.
Substantive issues:	Freedom of conscience; right not to be tried and punished again for an offence for which he has already been finally convicted; inhuman and degrading treatment.
Articles of the Covenant:	7, 10, 14 (7) and 18 (1).
Articles of the Optional Protocol:	2.

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Annex

Views of the Human Rights Committee under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights (113th session)

concerning

Communication No. 2218/2012*

Submitted by:	Zafar Abdullayev (represented by counsel)
Alleged victim:	The author
State party:	Turkmenistan
Date of communication:	3 September 2012 (initial submission)

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 25 March 2015,

Having concluded its consideration of communication No. 2218/2012, submitted to the Human Rights Committee on behalf of Zafar Abdullayev under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the author of the communication and the State party,

Adopts the following:

Views under article 5, paragraph 4, of the Optional Protocol

1.1 The author is Zafar Abdullayev, a Turkmen national, born in 1987. He claims to be the victim of a violation by Turkmenistan of his rights under articles 7, 14 (7) and 18 (1) of the International Covenant on Civil and Political Rights. Although the author does not invoke article 10 of the Covenant specifically, the communication also appears to raise issues under that article. The Optional Protocol entered into force for Turkmenistan on 1 May 1997. The author is represented by counsel.

1.2 By note verbale dated 7 December 2012, the Committee informed the author that the Special Rapporteur on new communications and interim measures had decided not to issue a request for interim measures of protection.

* The following members of the Committee participated in the examination of the present communication: Yadh Ben Achour, Lazhari Bouzid, Sarah Cleveland, Olivier de Frouville, Yuji Iwasawa, Ivana Jelić, Duncan Laki Muhumuza, Photini Pazartzis, Mauro Politi, Víctor Manuel Rodríguez-Rescia, Fabián Omar Salvioli, Dheerujlall Seetulsingh, Anja Seibert-Fohr, Yuval Shany, Konstantine Vardzelashvili and Margo Waterval.
The texts of a joint opinion of Committee members Yuji Iwasawa, Anja Seibert-Fohr, Yuval Shany and Konstantine Vardzelashvili (concurring) and of an individual opinion of Committee member Yuval Shany (partly concurring, partly dissenting) are appended to the present Views.

The facts as presented by the author

2.1 The author explains that he has never been charged with a criminal or administrative offence other than his repeated criminal convictions as a conscientious objector. He was baptized as a Jehovah's Witness.

2.2 In the autumn of 2005, shortly after he turned 18, he was called up by the Military Commissariat to perform his compulsory military service. He explained orally and in writing to representatives of the Military Commissariat that his religious beliefs as a Jehovah's Witness did not permit him to undertake military service. His call-up was deferred for an indefinite period of time. In the spring of 2009, he was summoned for the spring call-up for military service. He again explained orally and in writing to representatives of the Military Commissariat the reasons why he would not undertake military service. On an unspecified date, he was charged under article 219 (1) of the Criminal Code for refusing to perform military service.

2.3 The author's trial took place on 8 April 2009 before Dashoguz City Court. He testified that he became a Jehovah's Witness in 2006 and that, from his study of the Bible, he had learned that servants of God should not take up weapons, learn war, or in any other way support the military or participate in military activity. He expressed willingness to fulfil his civic obligations by performing alternative civilian service. The Dashoguz City Court handed down a 24-month conditional sentence, under article 219 (1) of the Criminal Code. He was to be monitored regularly by the police. The author's conditional sentence ended in April 2011.

2.4 On 26 November 2011, the author was arrested by the police and brought to the Military Commissariat for the call-up for military service. The author again explained that his beliefs prevented him from undertaking military service. He was subsequently again charged under article 219 (1) of the Criminal Code.

2.5 On 6 March 2012, the author's case was examined by the Dashoguz City Court. He reiterated the reasons why his beliefs did not permit him to perform military service and expressed willingness to perform alternative service. He was again convicted under article 219 (1) of the Criminal Code but this time sentenced to 24 months of imprisonment. He was arrested in the courtroom and placed in detention.

2.6 On 27 March 2012, the Dashoguz Regional Court dismissed the author's appeal. On an unspecified date, the author appealed to the Supreme Court of Turkmenistan, but his appeal was dismissed on 10 July 2012.

2.7 The author was detained in the Dashoguz remand facility and later transferred to the LBK-12 prison, near the town of Seydi. Immediately upon his arrival at the LBK-12 prison, he was placed in quarantine for 10 days, when prison guards beat him on the head and on the soles of his feet with batons.

2.8 The author maintains that he has exhausted the available domestic remedies concerning his claim under article 18 (1) of the Covenant. As to his claims under articles 7 and 14 (7) of the Covenant, he maintains that there was no effective domestic remedy available to him. He refers to the concluding observations of the Committee against Torture concerning Turkmenistan,[1] in which the Committee noted the lack of an independent and effective complaint mechanism in the State party for receiving and conducting impartial and comprehensive investigations into torture allegations, in particular by prisoners and pretrial detainees. As to his claim under article 14 7, he notes that the Special Rapporteur on freedom of religion or belief had urged Turkmenistan to revise its legislation, which

[1] See CAT/C/TKM/CO/1, para. 11.

allowed defendants to be sentenced twice for the same offence, and notes that the State party has failed to act on those recommendations.

The complaint

3.1 The author claims that his imprisonment on account of his religious beliefs in itself constituted inhuman or degrading treatment within the meaning of article 7 of the Covenant.

3.2 He also claims that he was ill-treated by the prison guards of the LBK-12 prison, again in violation of his rights under article 7 of the Covenant.

3.3 The author further claims to be the victim of a violation of article 7 of the Covenant on account of the conditions at the LBK-12 prison. He refers, inter alia, to the report of February 2010 of Turkmenistan's Independent Lawyers Association, in which it is noted that the LBK-12 prison is situated in a desert with winter temperatures of minus 20 degrees Celsius and, in summer, heatwaves reaching 50 degrees. The prison is overcrowded and prisoners infected with tuberculosis and skin diseases are kept together with healthy inmates (see also para. 5.3 below). Although the author does not specifically invoke article 10 of the Covenant, the communication also appears to raise issues under that article.

3.4 The author furthermore claims a violation of his rights under article 14 (7) of the Covenant as he was convicted twice for his refusal to accept military service owing to his religious beliefs. He notes that, under article 219 (1) of the Criminal Code, refusing the call-up for military service is punishable by imprisonment for a maximum of two years and that article 18 (4) of the Law on Conscription and Military Service permits repeated call-up for military service, stipulating that a person refusing military service is exempt from further call-up only after he has received and served two criminal sentences.

3.5 The author also claims that his criminal prosecutions, convictions and imprisonment on account of his conscientious objection to military service have violated his rights under article 18 (1) of the Covenant. He notes that he repeatedly informed the Turkmen authorities that he was willing to fulfil his civic duties by performing genuine alternative service; however the State party's legislation does not provide for the opportunity to perform any alternative service.

State party's observations on admissibility and merits

4. By note verbale of 17 March 2014, the State party informed the Committee that, inter alia, the author's case has been "carefully considered by the relevant law enforcement bodies of Turkmenistan and no reason had been found to appeal the court decision". The criminal offence committed by the author was "determined accurately according to the Criminal Code of Turkmenistan". It further notes that, under article 41 of the Constitution, "protection of Turkmenistan is the sacred duty of every citizen". General conscription is compulsory for male citizens. In addition, the author did not meet the criteria for persons to be exempted from military service as provided for under article 18 of the Law on Military Conscription and Military Service.

Author's comments on the State party's observations

5.1 On 14 May 2014, the author noted that the State party does not contest the facts as set out in the communication. The only justification that the State party provides is that he was convicted and imprisoned as a conscientious objector to military service because he did not qualify for an exemption under article 18 of the Law on Conscription and Military Service. This shows the State party's total disregard for its commitments under article 18 of the Covenant and the Committee's jurisprudence upholding the right to conscientious objection to military service. Furthermore, the State party does not contest the author's

allegations that he has suffered inhuman and degrading treatment at the hands of the prison officials, in contravention of article 7 of the Covenant.

5.2 The author reiterated his claims that his repeated prosecution, conviction and imprisonment violated his rights under articles 7, 14 (7) and article 18 (1) of the Covenant. He requests the Committee to direct the State party (a) to acquit him of the charges under article 219 (1) of the Criminal Code and to expunge his criminal record; (b) to provide him with appropriate monetary compensation for the non-pecuniary damages suffered; and (c) to provide him with appropriate monetary compensation for the legal expenses he has incurred before the Committee.

5.3 On 22 October 2014, the author added that he was released on 6 March 2014, after serving his prison term. He reiterates the facts of his case and adds that, on 3 April 2012, he was transferred to the LBK-12 colony in the city of Seydi. Upon arrival, he was placed in the colony's isolation block for 10 days. There, the Head of the Operations Unit, Mr. S., organized his ill-treatment and humiliation. The author was subjected to beatings with clubs on the soles of his feet "and not just once", "goose stepping", doing push-ups, running, "screaming certain words" and sitting on the floor with stretched-out legs. As to the conditions in the isolation block, he notes that it lacked basic hygiene, that there were around 40 inmates in one cell, and that a metal barrel, emptied once a day, served as a toilet in the cell. During the day, inmates had to sit on the concrete cell floor and at night-time they were given dirty blankets which were insufficient for all prisoners. He also notes that, after his release, he was ordered to report to the police once a week over a certain period of time.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claim contained in a communication, the Human Rights Committee must, in accordance with rule 93 of its rules of procedure, decide whether or not the case is admissible under the Optional Protocol to the Covenant.

6.2 The Committee has ascertained, as required under article 5 (2) (a) of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

6.3 The Committee takes note that the author has exhausted all effective available remedies. It also notes that the State party has not invoked article 5 2 (b) of the Optional Protocol to challenge the admissibility of the communication. Accordingly, the Committee concludes that it is not precluded by article 5 (2) (b) of the Optional Protocol from examining the communication.

6.4 The Committee considers that the author's claims raising issues under articles 7, 10, 14 (7) and article 18 (1) of the Covenant are sufficiently substantiated for the purposes of admissibility, declares them admissible and proceeds to their examination on the merits.

Consideration of merits

7.1 The Human Rights Committee has considered the communication in the light of all the information made available to it by the parties, as provided for under article 5 (1) of the Optional Protocol.

7.2 The Committee takes note of the author's claim that, upon arrival at the LBK-12 prison on 3 April 2012, he was subjected to ill-treatment by the prison guards in violation of article 7 of the Covenant. It notes that the author has provided a detailed description of the manner in which he was ill-treated while in isolation, as well as the identity of the

organizer of his ill-treatment. The author claimed that he was placed in the colony's isolation block for 10 days, was beaten, subjected to "goose stepping", doing push-ups, running, and sitting on the floor with stretched-out legs. The Committee further notes that the author's detailed allegations and his argumentation regarding the lack of adequate mechanisms for investigation of torture claims in Turkmenistan were not refuted by the State party. The Committee also recalls that complaints of ill-treatment must be investigated promptly and impartially by competent authorities.[2] In the absence of any other pertinent information on file, the Committee decides that due weight must be given to the author's allegations. Accordingly, it concludes that the facts as presented reveal a violation of the author's rights under article 7 of the Covenant.

7.3 The Committee notes the author's detailed claims concerning the deplorable prison conditions at the LBK-12 prison. He claimed, for example, that the isolation block lacked basic hygiene, there were around 40 inmates in one cell, a metal barrel emptied once a day served as a toilet in the cell; and that, during the day, inmates had to sit on the concrete cell floor and that at night-time they were given dirty blankets, insufficient in number (see paras. 3.3 and 5.3 above). The Committee notes that these allegations were not contested by the State party. The Committee recalls that persons deprived of their liberty may not be subjected to any hardship or constraint other than that resulting from the deprivation of liberty: they must be treated in accordance with, inter alia, the Standard Minimum Rules for the Treatment of Prisoners.[3] In the absence of any other pertinent information on file, the Committee decides that due weight must be given to the author's allegations. Accordingly, the Committee finds that confining the author in such conditions constitutes a violation of his right to be treated with humanity and with respect for the inherent dignity of the human person under article 10 (1) of the Covenant.[4]

7.4 The Committee further notes the author's claim under article 14 (7) of the Covenant that he has been convicted and punished twice for his objection to perform the compulsory military service. The Committee also notes that, on 8 April 2009, the Dashoguz City Court convicted the author under article 219 (1) of the Criminal Code for his refusal to perform the compulsory military service, handing down a 24-month conditional sentence, and that he was then again convicted by the same court under article 219 (1) of the Criminal Code on 6 March 2012 and sentenced to 24 months of effective imprisonment. The Committee further notes the author's submission that article 18 (4) of the Law on Conscription and Military Service permits repeated call-up for military service and stipulates that a person refusing military service is exempt from further call-up only after he has received and served two criminal sentences. It notes in addition that these claims were not refuted by the State party.

7.5 The Committee recalls its general comment No. 32, wherein, inter alia, it stated that article 14 (7) of the Covenant provides that no one shall be liable to be tried or punished again for an offence of which they have already been finally convicted in accordance with the law and penal procedure of each country. Furthermore, repeated punishment of conscientious objectors for not obeying a renewed order to serve in the military may amount to punishment for the same crime if such subsequent refusal is based on the same

[2] Human Rights Committee, general comment No. 20 (1992) on the prohibition of torture and cruel treatment or punishment.

[3] See for example communication No. 1520/2006, *Mwamba v.Zambia*, Views adopted on 10 March 2010, para. 6.4.

[4] See for example communication No. 1530/2006, *Bozbey v. Turkmenistan*, Views adopted on 27 October 2010, para. 7.3.

constant resolve grounded in reasons of conscience.[5] The Committee notes that, in the present case, the author has been tried and punished twice under the same provision of the Turkmen Criminal Code on account of the fact that, as a Jehovah's Witness, he objected to, and refused to perform, his compulsory military service. In the circumstances of the present case, and in the absence of contrary information from the State party, the Committee concludes that the author's rights under article 14 (7) of the Covenant have been violated.

7.6 The Committee further notes the author's claim that his rights under article 18 (1) of the Covenant have been violated, owing to the absence in the State of an alternative to compulsory military service. His refusal to perform military service on account of his religious conscience thus led to his criminal prosecution and subsequent imprisonment. The Committee takes note of the State party's submission that the criminal offence committed by the author was "determined accurately according to the Criminal Code of Turkmenistan" and that, pursuant to article 41 of the Constitution, "Protection of Turkmenistan is the sacred duty of every citizen" and that general conscription is compulsory for male citizens.

7.7 The Committee recalls its general comment No. 22, in which it considers that the fundamental character of the freedoms enshrined in article 18 1 is reflected in the fact that no derogation from that article may be made, even in time of public emergency, as stated in article 4 (2) of the Covenant. The Committee recalls its prior jurisprudence to the effect that, although the Covenant does not explicitly refer to a right of conscientious objection, such a right derives from article 18, inasmuch as the obligation to be involved in the use of lethal force may seriously conflict with the freedom of conscience.[6] The right to conscientious objection to military service inheres in the right to freedom of thought, conscience and religion. It entitles any individual to an exemption from compulsory military service if such service cannot be reconciled with that individual's religion or beliefs. The right must not be impaired by coercion. A State may, if it wishes, compel the objector to undertake a civilian alternative to military service, outside the military sphere and not under military command. The alternative service must not be of a punitive nature. It must be a real service to the community and compatible with respect for human rights.[7]

7.8 In the present case, the Committee considers that the author's refusal to be drafted for compulsory military service derives from his religious beliefs and that the author's subsequent convictions and sentences amounted to an infringement of his freedom of conscience, in breach of article 18 (1) of the Covenant. The Committee recalls that repression of the refusal to be drafted for compulsory military service exercised against persons whose conscience or religion prohibit the use of arms is incompatible with article 18 (1) of the Covenant.[8] It also recalls that, during the consideration of the State party's initial report under article 40 of the Covenant, it previously expressed its concern that the Law on Conscription and Military Service, as amended on 25 September 2010, does not recognize a person's right to exercise conscientious objection to military service

[5] See the Committee's general comment No. 32 (2007) on article 14: right to equality before courts and tribunals and to a fair trial, paras. 54–55.

[6] See communications Nos. 1321/2004 and 1322/2004, *Yeo-Bum Yoon and Myung-Jin Choi v. the Republic of Korea*, Views adopted on 3 November 2006, para. 8.3; and No. 1786/2008, *Jong-nam Kim et al. v. Republic of Korea*, Views adopted on 25 October 2012, para. 7.3.

[7] See communications Nos. 1642-1741, *Min-Kyu Jeong et al v. The Republic of Korea*, Views adopted on 24 March 2011, para. 7.3; and No. 1786/2008, *Jong-nam Kim et al. v. Republic of Korea* (see footnote 13), para. 7.4.

[8] See communications Nos. 1642-1741, *Min-Kyu Jeong et al v. The Republic of Korea* (see footnote 14), para. 7.4; No. 1786/2008, *Jong-nam Kim et al. v. Republic of Korea* (see footnote 13), para. 7.5; and No. 2179/2012, *Young-kwan Kim et al. v. Republic of Korea*, Views adopted on 15 October 2014, para. 7.4.

and does not provide for any alternative military service, and recommended that the State party inter alia take all the necessary measures to review its legislation with a view to providing for alternative service.[9]

8. The Human Rights Committee, acting under article 5 (4) of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the State party has violated the author's rights under articles 7, 10 (1), 14 (7) and 18 (1) of the Covenant.

9. In accordance with article 2 (3) (a) of the Covenant, the State party is under an obligation to provide the author with an effective remedy, to include an impartial, effective and thorough investigation of the author's claims falling under article 7, prosecution of any person(s) found to be responsible; expunging of his criminal record; and full reparation, including appropriate compensation. The State party is under an obligation to avoid similar violations of the Covenant in the future, including the adoption of legislative measures guaranteeing the right to conscientious objection.

10. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether or not there has been a violation of the Covenant and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant, and to provide an effective and enforceable remedy in case a violation has been established, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to publish the Committee's Views.

[9] Human Rights Committee, concluding observations on Turkmenistan (CPR/C/TKM/CO/1, para. 16).

Appendices

Appendix I

[Original: English]

Joint opinion of Committee members Yuji Iwasawa, Anja Seibert-Fohr, Yuval Shany and Konstantine Vardzelashvili (concurring)

1. We concur with the Committee's conclusion that the State party has violated the rights of the author under article 18 (1) of the Covenant, but for somewhat different reasons. We believe that the majority should have adhered to the approach it employed in its Views on similar issues in 2006 and 2010, which analysed the authors' rights to conscientious objection to military service as an instance of manifestation of belief in practice, which is subject to limitation under article 18 (3).[1] Instead, in 2011, the majority of the Committee shifted its approach and treated the right to conscientious objection to military service as part of the absolutely protected right to hold a belief.[2] Despite the objections in separate opinions,[3] the Committee has employed this absolute approach in recent cases, including in paragraphs 7.7 and 7.8 of the present Views. We do not consider the majority's explanations for the change of analysis persuasive. We do, however, conclude that the criminal conviction of the author for refusing to perform military service in the present case was not justified under article 18 (3) and therefore that the State party has violated his rights under article 18 (1).

[1] See communications No. 1321-1322/2004, *Yeo-Bum Yoon and Myung-Jin Choi v. The* Republic *of Korea*, Views adopted by the Committee on 3 November 2006 and No. 1593-1603/2007, *Eu-min Jung et al v. the Republic of Korea*, Views adopted by the Committee on 23 March 2010.

[2] See communication Nos. 1642-1741/2007, *Jeong et al. v. the Republic of Korea*, Views adopted on 24 March 2011, appendix (individual opinion of Committee members Yuji Iwasawa, Gerald L. Neuman, and Michael O'Flaherty (concurring)).

[3] See communications No. 1853-1854/2008, *Atasoy and Sarkut v. Turkey*, Views adopted on 29 March 2012, appendix I (individual opinion of Committee member Gerald L. Neuman, jointly with members Yuji Iwasawa, Michael O'Flaherty and Walter Kälin (concurring)); No. 1786/2008, *Kim et al. v. the Republic of Korea*, Views adopted on 25 October 2012, appendix III (individual opinions of Committee member Walter Kälin (concurring)) and appendix IV (Committee members Gerald L. Neuman and Yuji Iwasawa (concurring)); No. 2179/2012, *Kim et al. v. the Republic of Korea*, Views adopted on 15 October 2014, appendix I (joint opinion of Committee members Yuji Iwasawa, Gerald L. Neuman, Anja Seibert-Fohr, Yuval Shany and Konstantine Vardzelashvili (concurring)).

Appendix II

[Original: English]

Individual opinion of Committee member Yuval Shany (partly concurring, partly dissenting)

1. I have associated myself with the joint individual opinion authored by Committee members Iwasawa *et al* with respect to the reasoning espoused by the majority on the Committee, underlying the finding of a violation of article 18 of the Covenant by the State party. In this additional individual opinion, I wish to express my concerns about the findings reached by the majority on the Committee with respect to the violation of article 14 (7) by the State party.

2. Article 14 (7) of the Covenant reflects the *ne bis in idem* or "double jeopardy" principle, which is designed to ensure that no one should be tried more than once for the same offence. According to the Views of the Committee, the author's rights were violated because he was tried twice under article 219 (1) of the Criminal Code in two separate instances for failing to report for military service in 2009 and 2011. According to paragraph 7.5 of the Views of the Committee, "repeated punishment of conscientious objectors for not having obeyed a renewed order to serve in the military may amount to punishment for the same crime if such subsequent refusal is based on the same constant resolve grounded in reasons of conscience". Since the grounds for the author's refusal to serve were, on both occasions, the same reasons of conscience—his belief as a Jehovah's Witness in the wrongfulness of military service—the Committee found a violation of article 14 (7) of the Covenant. I am however of the view that a more nuanced approach to the application of article 14 (7) is required and I am not convinced that, in the circumstances of the case, it was sufficiently shown that the author's right not to be tried twice for the same offence was in fact violated.

3. When considering the application of the *ne bis in idem* principle, it is important to distinguish between instances of an individual being repeatedly tried for exactly the same offence—comprising the same *actus reus*—and instances of an individual being tried for offences which have similar characteristics, but which were committed at different points in time, i.e. having different *actus rei*. There is no doubt that article 14 (7) covers repeated trials belonging to the first category of cases, but its application to the second set of trials is less clear-cut, and depends on the particular nature of the various multiple trials. In the present case, the author was tried twice, but not for exactly the same offence: the first time, he was tried for a refusal to serve in the military in 2009, and the second time he was tried for a similar refusal in 2011. His case thus falls under the second category of multiple trials alluded to above, which may sometimes, but not always, violate the *ne bis in idem* principle.

4. The situation of the author, who has been repeatedly called up for military service and repeatedly refused call-up, is analogous to that of other individuals tried repeatedly for offences stemming from a "constant resolve" involving a rejection of the overarching social norm captured by the relevant criminal prohibitions (for the purpose of applying article 14 (7) it is not relevant whether or not opposition to the substantive social norm in question is protected by the Covenant). Such a constant resolve may underlie, for example, practices of chronic tax evasion, involvement in an ongoing bigamous relationship or continuing possession of substances designated as unlawful by the State party.

5. In cases involving repeated or continuing offences stemming from a constant resolve it appears that the State authorities have a choice between prosecuting the individual for each separate *actus reus* that he or she committed, i.e. each manifestation of the constant resolve, and prosecuting the individual for an overarching offence involving the rejection of the relevant social norm, i.e. for the whole series of *actus rei* deriving from the constant resolve. As long as the cumulative severity of sanctions sought for the distinct "smaller" offences does not exceed the sanction that could have been reasonably sought for the overarching "larger" offence, I do not believe that multiple trials for similar yet distinct offences necessarily violate the *non bis in idem* principle. In fact, holding differently may encourage State parties to seek to impose on an individual being tried a far more severe sanction for the first distinct offence than would otherwise be the case.

6. The facts of the present case exemplify my concerns. The author was tried and convicted in 2009 for refusing to report for military service, but received only a light sentence: a two-year suspended sentence. Only following his second trial did he actually serve a two-year prison sentence. Under those circumstances, it appears that, unlike the second conviction, which resulted in a severe penalty commensurate with the overarching offence attributed to the author by the authorities of the State party, the author's first conviction did not necessarily reveal an intention by the State authorities to punish him for the overarching offence of rejecting military service, or to designate as free from punishment all future failures to report for service. The result of adopting the approach of the majority, without requiring the author to establish that the first trial should be understood as designed to address all subsequent acts emanating from the constant resolve to refuse military service, might be to induce States parties to treat the first-time offence more severely, not as a distinct "small" offence, but rather as pertaining to the overarching "larger" offence. I fail to see how this would serve to protect the due process rights of individuals under the Covenant. As a result, I do not consider it sufficiently well established that the author's rights under article 14 7 were violated in the circumstances of the present case.